UNITED STATES PATENT AND TRADEMARK OFFICE

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HOGAN & HARTSON LLP
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEEN ST.
DENVER, CO 80202

EXAMINER
WOOD, WILLIAM H

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	09/780,038	WOOKEY, MICHAEL J.
	Examiner	**Art Unit**	
	William H. Wood	2193	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7,8,12-14,16-18,22,23 and 25* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7,8,12-14,16-18,22,23 and 25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claims 1-5, 7-8, 12-14, 16-18, 22-23 and 25 are pending and have been

examined.

Information Disclosure Statement

1.   The information disclosure statement (1449) filed 09 February 2001 is in

the application and was considered as previously indicated on 20 November

2003. The 1449 form was found in a different location than the IDS itself. The

statement in the previous office action as to the IDS missing its contents was a

mistake.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.

3.   Claim 18 and 22 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. Claim 18 recites a

"network system" which does not necessarily contain hardware, thus the claim

is software *per se.*

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in

this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 7-8, 12, 18 and 23 are rejected under 35 U.S.C. 102(b) as being

anticipated by **Fletcher** et al. (USPN 6,009,274).

Claim 7

Fletcher disclosed a method of deploying systems management software within

a network including multiple managed hosts, comprising:

positioning an installation station within the network, wherein the

installation station includes data storage for storing the systems management

software and is in communication with a first and a second one of the managed

hosts *(column 5, lines 5-52; managed hosts are systems with agents on them)*;

transmitting from the first and second ones an installation initiation

request to the installation station *(column 5, lines 29-31; agent request needed*

files/components);

in response to receiving the installation requests, establishing with the

installation station a first active installation session and a second active

installation session *(column 5, lines 31-38)*;

at the first and the second ones, downloading a survey tool from the

installation station *(column 5, lines 5-52; column 9, lines 1-42; the updated*

agent);

executing the downloaded survey tools to gather environment

information for the first and second ones and to create output files comprising

the gathered environment information, wherein the gathered environment

information for the first one differs from the gathered environment information

for the second one *(column 5, lines 31-33; column 10, lines 58-60; environment*

information is the differing components required by the various agents' systems);

at the first and the second ones, downloading an installation tool from

the installation station *(column 5, lines 5-52; column 9, lines 17-29)*;

transmitting the output files from the first and second ones to the

installation station *(column 5, lines 27-30; environment information goes up to*

the server);

in response to receiving the output files, transferring a payload of the

systems management software to the first and second ones, wherein prior to

the transferring a first portion of the systems management software is selected

for inclusion in the payload to the first one based on the gathered environment

information and a second portion of the systems management software is

selected for inclusion in the payload to the second one based on the gathered

environment information *(column 5, lines 31-36; environment information is the*

differing components required by the various agents' systems);

at the first and second ones, installing the transferred payloads with the

installation tool *(column 5, lines 5-52; column 9, lines 17-29)*; and

in response to the installing of the transferred payloads, configuring the

installed payloads at the first and second ones based on the differing

environment information *(column 5, lines 5-52; column 9, lines 17-29,*

configuring by arranging the payloads via adding/replacing appropriate

components of the systems), wherein the transferring and installing of the

payloads is remotely managed with the first and second active installation

sessions at the installation station *(column 5, lines 5-52; ASU manager)*.

Claim 8

Fletcher disclosed the method of claim 7, wherein the survey tool

downloading, the executing, the installation tool downloading, the transmitting,

and the installing occur at least partially concurrently at the first and the

second ones of the managed hosts *(figure 5, Agent Pool; column 5, lines 35-44; a*

group of agent systems "at least partially concurrently" operating with the

server).

Claim 12

Fletcher disclosed the method of claim 7, further including allocating network

addresses to network devices associated with the first and second ones *(column*

5, line 11; column 7, lines 38-43).

Claim 18

Fletcher disclosed a network system for remotely monitoring an operating

computer system, comprising:

a managed host in the operating computer system linked to a

communications network *(column 5, lines 5-52, agent machine is the managed*

host), the managed host including a survey tool for automatically gathering

environment information and an installation tool for transmitting the

environment information over the communications network and for

automatically installing systems management software on the managed host

(column 5, lines 5-52; column 9, lines 17-29; column 10, lines 58-60; agent

gathers information and agent and self-extracting file install);

an installation station linked to the communications network configured

to receive the environment information and in response to transmit a payload

of the systems management software to the managed host *(column 5, lines 26-*

35); and

a remote service linked to the communications network and operable to

monitor operation of the computer system via execution of the installed

systems management software on the managed host *(column 5, lines 5-52;*

column 9, lines 17-29; the agent);

wherein the installation station tool is further configured to modify the

installed systems management software based on the environment information

(column 9, lines 20-26; self installer installs and replaces appropriate files and
components based upon what is required to be updated/installed) and wherein
the installation station processes the environment information to select the
payload to match the environment information *(column 5, lines 29-31).*

Claim 23

Fletcher disclosed a method for installing systems management software on a
host device to be remotely monitored, comprising:

communicatively linking with a link an installation station and the host
device, wherein the host device is positioned remote from the installation
station *(column 5, lines 5-52; host device being the system with the agent)*;

installing a survey tool on the host device operable to gather computing
environment information, wherein the computing environment information
comprises thresholds calculated by the survey tool *(column 5, lines 5-52; the*
agent; calculated environment information being the required components for
update/install; the agent had to determine this information which means it was
calculated, this includes version numbers);

receiving over the communication link at the installation station the
computing environment information for the host device, the computing
environment information comprising the calculated thresholds *(column 5, lines*
27-33);

loading an installation tool configured to automatically install the

systems management software on the host device *(column 5, lines 5-52; column*

9, lines 17-29);

transmitting a software payload comprising the systems management

software form the installation station to the host device, wherein the software

payload is not presently running on the host device *(column 5, lines 5-52; the*

required components to update/install; further column 9, lines 17-29, specifically

updates the agent itself);

first operating the installation tool to automatically install the software

payload on the host device *(column 9, lines 17-29)*; and

second operating the installation tool to automatically configure the

installed software payload based on the computing environment information

including the calculated thresholds *(column 9, lines 17-29; configured by the*

fact that certain versions and file/components must be added or replaced).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived by
> the manner in which the invention was made.

7.   Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Fletcher** et al. (USPN 6,009,274).

Claim 1

Fletcher disclosed a method for installing systems management software on a

host device to be remotely monitored, comprising:

communicatively linking an installation station and a host device,

wherein the host device is positioned remote from the installation station

(column 5, lines 5-52);

receiving over the communication link at the installation station

computing environment information for the host device *(column 5, lines 5-52;*

column 10, lines 58-60; environment information being the information of needed

outdated software);

responsive to the receiving of the computing environment information,

loading an installation tool configured to automatically install the systems

management software on the host device *(column 9, lines 17-29; self installing*

files);

loading of the installation tool, transmitting a software payload

comprising the systems management software from the installation station to

the host device *(column 5, lines 5-52 and column 9, lines 17-29; required*

files/components for update/install);

first operating the installation tool to automatically install the software

payload on the host device *(column 9, lines 17-29)*; and

second operating the installation tool to automatically configure the

installed software payload based on the comprising environment information,

wherein the computing environment information comprises thresholds based

on configuration of the host device and the automated configuring comprises

modifying the installed software payload based on the thresholds *(column 9,*

lines 17-29; configuring by arranging the payloads via adding/replacing

appropriate components of the systems, and configured by the fact that certain

versions and file/components must be added or replaced),

wherein the installation station accesses data storage storing differing

ones of the systems management software and selects the software payload

from the differing ones based on the received computing environment

information *(column 5, lines 29-36)*.

Fletcher did not explicitly state "responsive to the loading of the installation

tool, transmitting ..." as recited in the claim language. However, **Fletcher**

demonstrated that it was known at the time of invention to transmit

information in a piece wise manner (column 11, line 47 to column 12, line 26).

It would have been obvious to one of ordinary skill in the art at the time of

invention to transmit in response to a prior transmission and thus loading of

the installation tool (piece-meal transmission) as suggested by **Fletcher**'s own

teaching. This implementation would have been obvious because one of

ordinary skill in the art would be motivated to provide an efficient use of

network resources, for example : round robin (column 11, line 66); background

transmission (column 12, lines 19-26).

Claim 2

Fletcher disclosed the method of claim 1, wherein the computing environment

information includes information selected from the group consisting of host

information, identification of modules for monitoring the host device,

thresholds based on configuration of the host device, and installation

commands to run during the first operating *(column 10, lines 58-60, thresholds*

are at least versions).

Claim 3

Fletcher disclosed the method of claim 1, further including loading a survey

tool on the host device and running the survey tool to automatically gather the

computing environment information *(column 5, lines 5-52; function of the agent)*.

Claim 4

Fletcher disclosed the method of claim 3, further including prior to the

installation tool loading and the survey tool loading, transmitting the

installation tool and the survey tool from the installation station to the host

device *(column 5, lines 5-52 and column 9, lines 1-42; the updated agent and the self installation package).*

8.   Claims 5, 14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fletcher** et al. (USPN 6,009,274) in view of Applicant Admitted Prior Art (**APA**, Applicant's uncontested Official Notice).

Claim 5

Fletcher did not explicitly state the method of claim 3, wherein the survey tool is configured to create an extensible markup language (XML) descriptor file including the computing environment information. **APA** demonstrated that it was known at the time of invention to utilize files as a medium of transport and storage of output and a common type of file is an XML file. It would have been obvious to one of ordinary skill in the art at the time of invention to implement the output of **Fletcher** within an XML file. This implementation would have been obvious because one of ordinary skill in the art would be motivated to produce output in such a manner as is standard (and thus easy to implement, XML is a standard file type used in networks especially) in the computer world.

Claim 14

Fletcher disclosed a networked method for automatically deploying and installing agent software in a network computer device, comprising:

communicatively linking an installation station via a communications

network to the network computer device *(column 5, lines 5-52; network*

computer device is the system with the agent);

downloading a survey script from the installation station onto the

network computer device *(column 5, lines 5-52; agent)*;

executing the survey script to automatically create an output file defining

a computing environment for the network computer device *(column 5, lines 5-*

52; information about what is needing updated/installed);

downloading an installation Daemon from the installation station onto

the network computer device *(column 9, lines 17-29; updated agent)*;

using the installation Daemon to retrieve the output file and transfer a

copy of the output file to the installation station *(column 5, lines 5-52;*

information about what is needing updated/installed);

in response to receiving the copy, transferring the agent software to the

network computer device over the communications network *(column 9, lines 1-*

42);

automatically installing the agent software on the network computer

device with the installation Daemon *(column 9, lines 1-42)*; and

with the installation Daemon, performing modifications of the installed

agent software based on the output file to enhance operation of the installed

agent software *(column 9, lines 17-29; configured by the fact that certain*

versions and file/components must be added or replaced).

Fletcher did not explicitly state survey tool being a *script*. **APA** demonstrated that it was known at the time of invention to utilize scripts as executable commands. It would have been obvious to one of ordinary skill in the art at the time of invention to implement the system of **Fletcher** with a survey tool as a script. This implementation would have been obvious because one of ordinary skill in the art would be motivated to provide a survey tool as a commonly implemented element such as a script (scripts are often used due to easy maintainability).

<u>Claim 16</u>

Fletcher and **APA** disclosed the method of claim 14, wherein the output file includes information selected from the group consisting of network computer device hardware and software configuration information, identification of modules for monitoring the network computer device, thresholds based on configuration of the network computer device, and installation commands for the installation Daemon to run during the installing *(column 10, lines 58-60, configuration information is the present and required files and components; thresholds are at least versions)*.

Claim 17

Fletcher and **APA** disclosed the method of claim 14, wherein the installation

Daemon is adapted to create progress messages during the installing and

wherein the progress messages are accessible by the network computer device

(column 13, lines 36-39).

9.   Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Fletcher et al. (USPN 6,009,274) in view of "**Microsoft** Computer Dictionary",

Third Edition.

Claim 13

Fletcher did not explicitly state the method of claim 12, wherein the network

address allocating is performed at least partially concurrently with the

installing and wherein network addresses are selected from network addresses

preprogrammed into a router based on a forecasted number of the associated

network devices. **Microsoft** demonstrated that it was known at the time of

invention to utilize the dynamic SLIP protocol wherein a user's IP address is

assigned every time a user connects (page 166; every time a user connects

meaning at least partially concurrently) and also DHCP (page 142). It would

have been obvious to one of ordinary skill in the art at the time of invention to

implement the networked system of **Fletcher** with dynamic allocation of

network address using dynamic SLIP. This implementation would have been

obvious because one of ordinary skill in the art would be motivated to provide

the above system with commonly known technology to efficiently use a limited

number of IP addresses (see SLIP definition).

10.   Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Fletcher et al. (USPN 6,009,274) in view of **Goldband** et al. (USPN 6,434,532).

Claim 22

Fletcher did not explicitly state the system of claim 18, wherein the

installation tool functions to generate an installation report and transmit the

installation report to the installation station, wherein the installation station

functions in response to the installation report to transmit a request for

approval of adding the managed host to the network system to the remote

service, and wherein the remote service responds to the request for approval by

determining whether to begin monitoring the managed host.

However, **Goldband** demonstrated that it was known at the time of invention to

send information about current states and processes to the server (column 3,

lines 15-22) and making that information available to the user (column 4, line

63 to column 5, line 12). It would have been obvious to one of ordinary skill in

the art at the time of invention to implement the installation system of

Fletcher with creating progress messages during installation and reporting to

interested parties as suggested by **Goldband**'s own teaching. This

implementation would have been obvious because one of ordinary skill in the

art would be motivated to provide information in the event of an error about

services **Goldband** is demonstrated to be performing (column 2, lines 2-17).

Goldband demonstrated that it was known at the time of invention to provide

for management functions (column 4, lines 1-23) and report to a central site

(column 3, lines 15-22; column 4, line 63 to column 5, line 12). It would have

been obvious to one of ordinary skill in the art at the time of invention to

implement the network system of **Fletcher** with conditional inclusion

depending on a report of installation. This implementation would have been

obvious because one of ordinary skill in the art would be motivated to provide

the server with communicating to fully functioning agent or other software that

is installed error free.

11.   Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Fletcher et al. (USPN 6,009,274) in view of **Platt** (USPN 5,421,009).

Claim 25

The limitations of claims 25 correspond to claims 1-4, 7-8, 12, 18 and 22-23

and as such are rejected in the same manner. **Fletcher** did not explicitly state

determining commands to run during installation via the survey tool. **Platt**

demonstrated that it was known at the time of invention to determine necessary commands from surveying a target system (column 2, lines 12-18). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the surveying installation system of **Fletcher** with determining necessary commands are present as found in **Platt**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to provide assurance that a system can perform correctly and thus accomplish the task (column 2, lines 14-16).

Response to Arguments

12.   Applicant's arguments filed 16 July 2007 have been fully considered but they are not persuasive. Applicant argues 101 issues are not present and **Fletcher** does not disclose the newly amended features of claim 1. These arguments are not persuasive.

Claim 18 recites only elements of a system which are software. The claim does not recite "management software ... installed on 'the host'". The claim recites intended use of the management software.

Fletcher addresses the new amendments as discussed above under the prior art rejections. Claim 14 does not have the same requirements as claim 1.

Having addressed the issues raised by Applicant the rejections are maintained as indicated.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
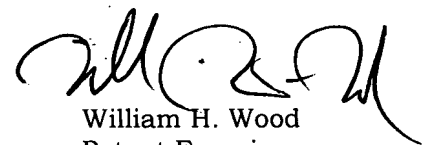
Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 10:00am - 4:00pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)-272-3756. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained form either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see http://pair-direct.uspto.gov. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

William H. Wood
Patent Examiner
AU 2193
October 1, 2007